IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Revision No. 2483 of 2006 (O&M)

Date of Decision : 24.04.2007

Gurjit Kaur.

…. Petitioner

Versus

Hakam Singh

….Respondent

CORAM : HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. M.K. Singla, Advocate,
for the petitioner.

Mr. K.S. Malik, Advocate,
for the respondent.

S.D. ANAND, J.

1. This revision petition is directed against the order dated 01.11.2006 passed by learned Sub Divisional Judicial Magistrate, Dhuri, vide which a petition under Section 125 Cr.P.C. filed by the petitioner – Gurjit Kaur, for the grant of maintenance allowance at the rate of Rs. 5000/- per month and litigation expenses amounting to Rs. 10,000/-, was declined on a finding that the petitioner has not been able to proved to have validly married the respondent. The finding stemmed from the evidence obtaining on the file to the effect that the (first) marriage of the petitioner with Jaswinder Singh-RW2 had not been validly dissolved.

2. Mr. M.K. Singla, learned counsel for the petitioner argued that the finding recorded by the learned Trial Magistrate deserves to be invalidated in view of the fact that there is evidence on the file to the effect that the first marriage of the petitioner with Jaswinder Singh-RW2 had been dissolved as per the custom prevalent in District Sangrur. In support of the averment that a custom-based marriage dissolution is acceptable in law, the learned counsel placed implicit reliance upon 2003(3) RCR (Civil), 503 (Jasbir Singh Vs. Inderjit Kaur).

3. The plea aforementioned was resisted on behalf of the respondent. It was averred that the factum and the custom-based dissolution of marriage between the petitioner and RW2-Jaswinder Singh had neither been pleaded nor proved on the file. The plea raised in the context was that whatever feeble evidence has been adduced cannot be taken into consideration for want of a plea to that effect to the petitioner.

4. There is plethora of law on the point that a party is entitled to adduce evidence only in support of a plea raised by it. Any evidence, even if the reception thereof had been allowed by the Trial Court, cannot be validly considered by a Court of law. Faced with the predicament afore-mentioned, the learned counsel for the petitioner is not in a position to invite the attention of this Court to any law to the contrary.

5. Thus, the ruling in Jasbir Singh's case (supra) is of no relevance to the matter before this Court.

6. There cannot be a dispute with the proposition of law that it is only a legally wedded wife who is competent to initiate a plea for the award of maintenance in terms of the provisions of Section 125 of the Code of Criminal Procedure. In the absence of plea and proof about the dissolution of her (first) marriage with RW2-Jaswinder Singh, the petitioner could not have validly married the respondent. In that view of things, the view obtained and the line of reasoning adopted therefor by the learned Trial Magistrate deserve concurrence and it is so ordered accordingly.

7. Dismissed.

April 24, 2007 **(S.D. ANAND)**
vkd **JUDGE**